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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JUDGE'S COPY

JOHN RICHARD JAS,

FILED

HARRISBURG, PA NOV 12 2001

Plaintiff,

JUL 27 2001

Judge Rambo

MARY E. D'ANDREA CLERK STATE JUDGE

PER

DEPUTY CLERK

vs.

KENNETH D. KYLE, et al.,

Defendants.

PLAINTIFF'S REPLY TO DEFENDANTS' BRIEF IN
OPPOSITION TO PLAINTIFF'S MOTION FOR COURT ORDER
REQUIRING PRISON OFFICIALS TO RETURN PLAINTIFF'S
LEGAL MATERIALS AND PROVIDE HIM WITH WRITING PAPER

I. COUNTER STATEMENT OF FACTS

DC-ADM-803, ~~or~~ ^{any other written Policy} the Pennsylvania Department of Corrections ~~or~~ written SCI-Greene ~~or~~ Special Management Policy, which has been provided to Inmates ~~as this Plaintiff~~, require any inmate, including this Plaintiff, to request the Superintendent to approve requests for additional paper and/or Carbon paper. DC-ADM #803.K.C.-I.d.(2), specifically states: "a packet of fifty sheets of clean paper and five sheets of carbon paper. Paper must be 8 1/2 x 11 inches in size. Should the quantity of paper or carbon paper prove to be insufficient, the inmate may submit a request for more additional packets per month."¹¹ Nowhere in relevant portion(s) of DC-ADM #803, ~~as attached~~ the Defendants' Brief In Opposition, is the word "Superintendent" even used or mentioned.¹² Librarian was authorized to provide this Plaintiff with

additional sheets of paper and carbon paper on April 24, 2001. Plaintiff did not tell the medical section or Staff Member on May 2, 2001, but rather on May 1, 2001. On May 2, 2001, a Prison Psychologist stated that Plaintiff was not in danger of hurting himself, but was trying to manipulate staff and Plaintiff was not denied his legal property from May 2, 2001 – May 9, 2001, ^{to prevent him from having him self} and DC-ADM-#801-not any other written Pa-Doc, SCI-Greene or SMU Prison Policy, which has been provided to Inmates, such as this Plaintiff, require an inmate to behave and demonstrate appropriate behavior in order to be allowed to retain his own (1) records center box of legal and/or religious materials which he is permitted to have in his SMU cell under DC-ADM-#801-VZ 12592. Is there any Pa-Doc, SCI-Greene or SMU Unit Policy, which has been provided to inmates, such as Plaintiff, which allows the SMU Unit Manager to prohibit any SMU Inmate, such as this Plaintiff from having any of his own property in his cell, including legal materials and to withhold such to curb the inmate – Plaintiff's behavior. Plaintiff did not accept and agree to the behavior management plan developed by staff at the meeting on May 8, 2001.

Although Plaintiff did in fact go through his stored property on May 22, 2001, for an hour, he has (7) seven boxes of property here and he does not

to go through all seven(7) of such boxes on May 21, 2001, and, as a consequence, was unable to file the necessary legal papers hence to prepare petition for writ of certiorari to other court then and this is why he requested the additional 1 hour and 15 minutes with his lawyer on May 30, 2001, from his Unit Manager Mr. Cap-

While it is true that DC-ADM-#801-KI (Not DC-ADM 803), allows an inmate, such as the plaintiff to exchange legal and religious materials not more than once every thirty days except upon specific approval, here at SCI-Greene SMU, the SMU property officers assigned to dormitory property, are following the above policy here as they are legally required to do, as they do "not" permit this plaintiff nor other SMU inmates to go to the stored property and exchange their legal and/or religious materials once every thirty days here as required by ADM-#801-KI-m-5-1. Plaintiff Doe has no money to purchase legal envelopes, as his prison account is \$37.35 ready to be used.

II - ARGUMENTS

Defendants claim & argue that:

The order requested by Doe is inappropriate for two reasons. First, the relief sought

by Doe is not authorized by the AIA. Whitehead

1/ See Plaintiff Doe's APPENDIX, attached hereto as Plaintiff Exhibit A - see also Murray Affidavit attached hereto as Plaintiff Exhibit B.

Exhibit A - see also Murray Affidavit attached hereto as Plaintiff Exhibit B.

It appears the reason Doe seeks this relief is to prepare a writ of certiorari to be filed with the Supreme Court and not to prepare filings in this case. To the extent Doe seeks to obtain BSAC to allow him to pursue other matters not before this Court, the order sought would not be necessary or appropriate in aid of this Court's respective jurisdiction.¹¹ In his motion, Doe contends that "he is unable to meet all three of these court deadlines" due to his inability to gain access to his materials in storage. In Doe's Request to Mr. Capozza (Capozza Declaration, Exhibit D), Doe states that he needs access to his boxes only to prepare a petition for certiorari. Nothing in his request suggests that he needs to gain access to his stored property in order to pursue this litigation. Certainly, in view of Doe's numerous filings in this case, it appears that he has not been prevented from pursuing his claim here. Therefore, as an initial matter, because Doe does not clearly state that he is complaining about his inability to pursue this matter, this Court does not have the authority under the All Writs Act to provide the relief sought.¹²

¹¹ See Defendants' BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR CERTIORARI REQUIRING PRISON OFFICERS TO RETAIN Plaintiff's Legal Materials And Provide Him With Writing Materials.

By way of reply to such claims / argument plaintiff avers & argues that, contrary to what Defendants claim & argue, the order requested Plaintiff is not inappropriate, as the relief sought by Plaintiff is "is" authorized by the All Writs Act & the reason that the Plaintiff seeks the relief is not only to prepare a writ of certiorari before the Supreme Court, but also to file his brief in opposition to Defendants' motion for Summary Judgment And Brief In Support, help him in the case sub judice as well & the Plaintiff "does" this in his Motion For Order Of Court requiring SCI - Greene Prison Office To Return To The Plaintiff ALL HIS Legal Materials, Court Case File And LAW Books And To Provide HIM With Envelope Paper; Carbon Paper And Envelopes To Enable HIM To Meet Court Dead Lines, Inter Alia, Petition For Writ Of Mandamus And Brief In Support of which and thus, the order sought would be "necessarily appropriate in aid of [the court's] respective jurisdiction & is" authorized by the All Writs Act see = Commonwealth of Pennsylvania v. Pugh, 243 A.D. 2d 306, 595 N.Y.S.2d 100 (1998) - Furthermore, while it is true that this Plaintiff, on May 30, 2001, Requested his mail manager Capozzi did only state that he needed access to his stored paper to find the papers necessary to prepare his petition for writ of certiorari & that

also states in such § 80-d request, that he
also needed access to find & retrieve papers
from such stored property to prepare his
In opposition to Defendants Motion for Summary
Judgment, herein this instant case, he did
do so because he figured if he got granted
access to his stored property to search for
the papers he needed for his petition for
certiorari in the Supreme Court, that while
was looking for such papers he'd also look
for the papers which he also needed for his
Brief in opposition to Defendants' motion for
Summary Judgment, herein this instant case
so it was not necessary for him to state a
mention both of such in his § 80-d Request
and just because this Plaintiff has filed numerous
other pleadings herein this does not necessarily
automatically mean that he has all of the
necessary papers from his stored property
enough paper, carbon paper and/or envelopes
to enable him to prepare and file his brief
Opposition to Defendants' motion for Summary Judgment
herein this case and finally just because this
Plaintiff does not clearly state, in his motion, that
he does not have access to his stored property
locate & retrieve papers which he needs to prepare
a pleading in this case, although he does make
such in his motion, such does not mean that he

Court does not have the authority under the
Writ Act to provide the relief Plaintiff
the court is legally required under the Constitution
federal law in this circuit and in the U.S. Supreme
Court to construe this as ~~see Plaintiff's~~ plain
liberally and not hold such to stringer
standard as it would formal pleadings draft
by a lawyer & Defendants' arguments here
specious & legally frivolous.

Defendants next claim argues, that =
More importantly, this Court
Intervention is not required because
Sael's opportunity to pursue his claim
in this court hasn't been unreasonably
burden by SCI-Green Officials.
^{3/}

However in reply to such, the Plaintiff has
given the facts, arguments & ~~Plaintiff's~~ of authority
of his Motion for Order of Court Requiring SCI-Green
Officials To Return To This Plaintiff All His Legal Materials, Court
Files And Law Books And To Provide Him With Enough Paper, A
Paper And Envelopes To Enable Him To Meet Court Deadlines
Alta Petition For Writ Of Mandamus vs And Enjoin Support
also upon that herein this reply Be it ~~suffi~~ and
Plaintiff Sael's opportunity to pursue his claims in the
^{3/} See Defendants' Brief In Opposition To Defendants' Motion
Court Order Requiring From Officials To Return Plaintiff's

Court "has" been and will be irreversibly bound
SCI-Greene officials.

Defendants next claim & argue that =

"The prison policies followed in this case are reasonably related to legitimate penological interests and should be upheld."

However, by reply to such, the Plaintiff has argued
Defendants do not state what are the legitimate
penological interests that the prison policies
in this case which are reasonably related to or
such are reasonably related to such and, by law,
Court may not assume or guess at such an
plaintiff avers that given what he states, any
& sets forth in his motion, as well as hereto
reply brief, such prison policies are "not"
related to legitimate penological interests,
SCI-Greene staff do "not" follow and entitle
the Prison Policies set issue herein in full,
therefore, such should not be upheld.

Defendants next claims & argues that =

First, he claims he was denied

paper and carbon paper. The record

see Defendants' brief in opposition to Plaintiff's
Motion for a Stay Order Regarding Prison Officers
Plaintiff's legal materials and provide him with
writing materials at q-

shows, however, that Doe was provided 50 sheets of paper and 5 sheets of carbon paper on April 13, 2001, May 21, 2001, and June 26, 2001. (Sebek Declaration, 6, ~~Exhibit 6~~, Exhibit C). He was denied a request for paper and carbon paper on April 24, 2001, because it exceeded his monthly allotment of paper free-of-charge. He could have sought authorization from the superintendent for additional paper (Sebek Dec., 3), or purchased paper with his own funds (Sebek Dec., 4). Under these circumstances, SCI-OFFICER did not unreasonably deny Doe sufficient free paper and carbon paper to pursue the matter.

Doe also complains that he was not given large manila envelopes free-of-charge. He is entitled to 10 free regular legal envelopes per month, and may purchase manila envelopes with his own funds. (Sebek Dec., 9). THIS IS ALSO A REASONABLE ACCOMMODATION OF INATE LEGAL NEEDS.

However, by way of reply to this, the plaintiff avers that, just because he was permitted 50 sheets of paper in opposition to Plaintiff's Motion for Court Order Requiring Prison Officials To Provide Plaintiff Legal Materials And Provide Him With Legal Materials, at 9-10.

and 5 sheets of carbon paper on April 18, 2001, May 31, 2001, and June 26, 2001, does not necessarily mean that he now has sufficient paper and carbon paper to prepare his Brief In Opposition To Defendants' Motion For Summary Judgment And Memorandum In Support, his Plaintiff's Declaration In Opposition To Defendants' Motion For Summary Judgment And Defendants' Statement Of Undisputed Facts, Plaintiff's Statement Of Disputed Material Facts and Affidavit Plaintiff John Richard Doe, herein in this case, who such is not. Plaintiff avens & submits that, his Brief In Opposition To Defendants' Motion For Summary Judgment And Memorandum In Support is 17 pages in argument & in length and he needs three of such for a total of 51 pages of paper; that, his Plaintiff's Declaration In Opposition To Defendants' Motion For Summary Judgment And Defendants' Statement Of Undisputed Facts is 5 pages in length and needs three of such for a total of 15 pages of paper; that, his Plaintiff's Statement Of Disputed Facts is 3 pages in length & plaintiff needs three of such for a total of 9 pages of paper; and that, the Appendix Plaintiff John Richard Doe is 11 pages in length & he needs three of such for a total of 33 pages of paper. Additionally, Plaintiff needs 3 pieces of paper for the cover sheet for his Appendix Exhibits, 3 pieces of paper for his one page of soaring & 2 pieces of paper for his cover letter.

to the Clerk of this Court for a total of 8 pieces of paper. Additionally, Plaintiff avers & submits that altogether he needs a total of 110 pieces of paper in order to enable him to prepare his pleadings in opposition to Defendants' Summary Judgment Motion, herein this case.

Furthermore, the Plaintiff avers & submits that he needs a total of 8 pieces of carbon paper (2) two per pleading in order to enable him to prepare such pleadings, herein this case.

Although this Plaintiff did receive 50 sheets of paper and 5 sheets of carbon paper on April 18, 2001, and on May 21, 2001, and on June 26, 2001, such was an insufficient amount because Plaintiff had/had 12 active State & Federal cases now and also back then.

Furthermore, Plaintiff avers & argues that, Plaintiff was clearly given paper & a total of DC-ADM #80317-C-1-d-(2) and e-^g for the Acting Librarian who denied his request for paper and carbon paper on April 24, 2001, because he had not exceeded his monthly allotment of free paper and carbon paper for April, 2001, as, DC-ADM #80317-C-d-(2)-^g which states, "Should the quantity of paper and carbon provided above to be insufficient, the inmate

submit a request for one more additional packet month and, thus, Plaintiff ~~Plaintiff~~ was entitled to a packet of 50 sheets of paper and 5 sheets of carbon paper, which he requested on April 2001, by the very wording of DC-ADM #~~803~~ VI-C-1-d-(2), and furthermore, there is nothing whatsoever anywhere at all in DC-ADM #~~803~~ VI-C-1-d-(2)-~~for e.g.~~ nor any other DC-ADM of Corrections, SCI Greene or SMC Writing Policy, as has been provided to inmates, such as this Plaintiff, which requires Plaintiff to submit a request to the Superintendent for the additional legal packet of 50 sheets of paper and 5 sheets of carbon paper per month. Does the word Superintendent even even mentioned nor used anywhere at all there, DC-ADM- #803-VI-C-1-F and, as a result such, this Plaintiff did "not" by the controlling policy DC-ADM #803-VI-C-1-g have to send a request to the Superintendent for additional paper and carbon paper per month and Dr. Sebek, SCI-Greene Acting Librarian, "Peg" falsifies evidence in a deliberate & malitious attempt to mislead this Court when she says such in Para. AHS 3 §7, of her own Declaration, which Defendants offer in support of their Brief in Opposition. Furthermore, DC-ADM VI-C-1-g is the controlling policy in this and SCI-Greene

Prison officials, including Sharon Sebek, Acting Librarian, must follow and have no authority to change such policy nor to create any new policy and, by law, Prison officials may not enforce ~~any~~ any prison policy pertaining to inmates unless such is in writing and provided to inmates.

Furthermore, plaintiff avers & argues that the Defendants "lie" when they state that "He is entitled to 10 free regular legal envelopes per month" as plaintiff is not entitled to or provided with 10 free regular legal envelopes per month, as he only provided with 10 ^{free} small regular #10 business size white envelopes per month and further plaintiff's prison inmate account presently has a negative balance at least - \$57.33 and there is no way this plaintiff may purchase large manila legal size envelopes like he needs from the commissary here with his own funds as it is clearly evident that he has no funds of his own with which to do so and the Defendants & the Acting Librarian, Sharon Sebek know full fact that this Plaintiff is not provided with ten free regular legal envelopes per month and that this plaintiff has no funds(money) of his own with which to purchase legal envelope paper and carbon paper from the prison commissary with here but they have been to defendant to

evidence here & defense counsel knows better than to do

Furthermore, in Bounds v. Smith, 430 U.S. 217, 91 S.Ct. 1491, 52 L.Ed.2d 12 (1971), the U.S. Supreme Court held:

Prison officials must assist inmates in the preparation and filing of meaningful legal papers - - - (Bounds 430 U.S. at 228). * * * * *

It is indisputable that indigent inmates must be provided at state expense with paper and pen to draft legal documents with notarial services to authenticate them and with stamps to mail them (Bounds 430 U.S. at 227).

Although, Bounds v. Smith, does not specifically state that prison officials are required to furnish indigent inmates with large manila legal size envelopes per se, where, as herein, the indigent inmate plaintiff states that the legal pleading which he needs to file with the court will not fit regular envelope and unless prison officials provide him with large manila legal envelopes he will unable to mail his legal pleading s to the court, defense counsel and will then be denied access to the courts under the 1st Amendment, such envelope would be required to be provided free of charge the 1st Amendment Bounds v. Smith, supra.

Given the foregoing facts, arguments & citations of authorities, herein, supra, at 9-14, SCI-Greene Prison officials' denial of large legal manila envelopes to this Plaintiff is "not" a reasonable accommodation of inmate legal needs and SCI-Greene Prison officials should be required to provide Plaintiff with two (2) large manila legal envelopes to mail his summary Judgment Opposition Pleadings to the Court and to defense counsel, herein this case.

Finally, Plaintiff avers & argues, in Reply to Defendants' claims arguments of pp. 10-11 of their Brief In Opposition to Plaintiff's Motion for Order Requiring Prison Officials To Return Plaintiff's Legal Materials And Provide Him With Writing Materials that, based upon what he already stated and set forth herein this Reply Brief, supra, and based upon his facts, arguments and citations of authorities, as set therein his Motion for Order of Court Requiring SCI-Greene Prison Officials To Return To This Plaintiff ALL HIS Legal Materials, Court Case File Law Books And To Provide Him With Enough Paper, Carbon Paper And Envelopes To Enable Him To Meet Court Deadlines, Inter Alia Petition For Writ Of Mandamus And Brief In Support, It was "not" a reasonable action the Plaintiff all his Legal Materials In his cell from May 2, - May 10, nor was it a reasonable action to deny Plaintiff access to his stored legal just because he had previously spent an hour going thru such on, and while it might be otherwise reasonable to limit Plaintiff to going his stored property to normally once every 30 days given the burden on staff limiting such in this instance was "not" a reasonable action given the officers assigned to do SMC Inmate Property here do not follow Doc B1 SMC Inmates to go through their stored property here even once every 30 days w/

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN RICHARD JAE,
Plaintiff,

C.P. No. 15-CV-

VS.

Judge Ram
Mystate Judge Sm

KENNETH D. KYLER, et al.,
Defendants.

AFFIDAVIT OF PLAINTIFF JOHN RICHARD JAE

Plaintiff John Richard JAE states under
oath and penalty of perjury & pursuant to 28 U.S.C.S. 1746, that the following
is true and correct:

1. On Friday, July 13, 2001, I gave the S-105
SMU Sergeant here A DC-135A Inmate Request
Staff Member Form to go to my stored property
exchange legal and religious materials.

2. That, the last time I went to my stored property
here was on Sunday, June 17, 2001, over 34 days ago on

3. That, although I am entitled by DC-ADM #201
M-5-f to go to my stored property once every 30 days, I have
gone yet.

4. That, my Inmate Prison Account has a negative balance of at least
-\$57.36.

Signed this 23rd day of July, 2001
At Waynesburg, Pennsylvania

John Richard
Mr. JOHN RICHARD
#BQ-2319
SCI-Greene/SMU
175 Progress Drive

'AFFIDAVIT'

NOW THIS BLESSED DAY OF 21ST OF JULY 2001
OF OUR LORD, + JAMES S. MURRAY A WIT-
NESS OF THE HOUSE AT SCI GREENE'S
COURTMENT HAD BY CERTIFY UPON THE
AFFIDAVIT OF GENEVIEVE AND SUBJECT TO
THE LAWS OF THE UNITED STATES, PURSUANT
TO ~~18 USC § 1904~~ AND ALSO PURSUANT
TO 28 USC § 1746, THAT THE BELOW STATE-
MENTS ARE TRUE AND CORRECT TO THE
BEST OF MY KNOWLEDGE, WORKING BEYOND
RECOLLECTIONS, AND INFORMATION.

COMMONWEALTH OF PENNSYLVANIA
GREENE COUNTY, PA

DATED: July 21, 2001

S/ 
Mr. James S. Murray
OT-4152 SCI Greene

Now here comes the affad statement
of James S. Murray OT-4152 PRESENT
CONFERRED IN at SCI GREENE "SMU" H
22 I AM HOUSED IN SMU CONFERMED
SINCE FEBS 13, 2001 AFTER OR
BUND BY WAY OF TRANSFER FROM
SCI ALBION AS A RULE OR POLICY
WITHIN "SMU" AT SCI GREENE

PERMITTED BY POLICY TO BE ALLOWED SAME
ACCESS TO AN EXCHANGE OF CLOTHING OR ANY
REFUSED PROPERTY OR ITEMS FROM AND
EVERY MONTH 30 DAYS TO THE POINT
SINCE FEBRUARY 13, 2001 UNTIL CURRENT
IN I REFUSE PERSONALLY "PERMITTED" BY
STAFF THIS RIGHT OR CLOTHING ONLY ONCE
ON APRIL 21, 2001, YET SINCE AND EVER
MONTH I MAKE REQUEST OF STAFF TO BE
PERMITTED TO DO HONOR OF THE SAME AS
PREFER ALLOW THE RECORD TO PRACTICE IT
ON MAY 28, 2001 I HAD ALL MY PROPERTY CONCERNED
ATED AND ON JUNE 10, 2001 HAD LESS THAN
HAIR RETURNED WITHOUT PRACTICING ME TO
EXCHANGE OR REFUSED ALL MY ITEMS WHICH
IS VIOLATIONS OF POLICIES. THE POLICY STATE
EXCHANGE EVERY 30 DAYS IS DELIBERATELY
NOT ENFORCED. I KNEW PERSONALLY FOR A
FACT MYSELF, MR. RICHARD JONES BY
329 AND MANY MANY OTHERS HAVE BEEN
SCI CARE FOR THEM ARE INTENTIONALLY SP
DITTED. DID MANY ACTS OF ACCESS TO THE
CONCERNED PROPERTY AND SO FORTH.
CLOTHING AND SO FORTH.

COMMUNED WITH MR. JAMES MURRAY
CARTER COUNTY, PA
DATE: JULY 21, 2001

SJ
Mr. James Murray

CERTIFICATE OF SERVICE

I certify that on ~~7/22/01~~ 7/22/01, I mailed to the Person listed above and on carbon copy of the within Reply Brief in Opposition Plaintiff's Motion For Court Order Relating to Plaintiff's Legal Materials And Provide Him With Writing Materials and Exhibits A and Attached thereto, by U.S. 1st Class Mail, Postage Prepaid addressed to:

MR. Michael L - Harvey, SDAG,
OFFICE OF THE ATTORNEY GENERAL OF PENNSYLVANIA
1ST FLOOR - STRAWBERRY SQUARE
HARRISBURG, PA. 17120

I certify that on 7/22/01, I gave the original(s) of the documents to Prison Officials here for mailing to the Court.

Signed under penalty of perjury on this 22nd day of July 2001,
Harrisburg, Pennsylvania:

(S)


MR. JOHN RICHARD J.
Plaintiff and Pro Se COUNSEL